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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,232	10/09/2003	Paul Cheung	P/1941-30	9987
2352	7590	01/30/2006	EXAMINER	
OSTROLENK FABER GERB & SOFFEN			SOOHOO, TONY GLEN	
1180 AVENUE OF THE AMERICAS			ART UNIT	
NEW YORK, NY 100368403			PAPER NUMBER	

1723

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/682,232

Applicant(s)

CHEUNG, PAUL

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-4 and 7-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 2-4 and 7-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-02-05</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

**The pending claims are as filed on 12/02/2005, which are claims 2-4, 7-19.**

#### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in United Kingdom on 01/30/2003. It is noted, however, that applicant has not filed a certified copy of the UK application as required by 35 U.S.C. 119(b).

#### **Claim interpretation**

2. The term "transverse" is read broadly to encompass lying across an axis and is not read as limiting to require only a 90 degree perpendicular orientation of the cross piece to the handle. If applicant considers the orientation as 90 degrees, it is suggested applicant point out applicant's definition if applicant considers "transverse" as being perpendicular or 90 degrees.

3. The phrase "configured and constructed to aerate a foodstuff" modifies the positive structure of "a generally planar utility portion". Whereas the only positive structure pointed out is the recitation of "a generally planar utility portion", the phrase "configured and constructed to aerate a foodstuff" is deemed as being directed to intended use and is afforded little, if any, further structural distinction or limitation in scope to the positively claimed structure of "a generally planar utility portion. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art

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apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

4. The phrase “a generally planar utility portion” is read as to include elements such as looped springs which may be lie upon a plane, corresponding to applicant’s interpretation that applicants looped spring 20 may lie in a generally in a plane.

#### ***Claim Objections***

5. Claim 14 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claim has been now amended to remove any numerical reference to any dependency upon a parent claim.

#### ***Claim Rejections - 35 USC § 112***

6. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim has been now amended to remove any numerical reference to any dependency upon a parent claim. Thus one can not determine the scope of what is defined by claim 14.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 2-4, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Fjellstedt 2798702.

Fjellstedt teaches a handle 1,2, a cross piece 3, 5, 8 which has a horizontal surface which extends across the longitudinal axis of the handle 1 thereby oriented transversely relative to the handle, and at least one generally planar utility portion member 4 which is formed from a center wire 9 planar loop in which is disposed inside a coil spring 4 which is not fixed upon the medial portions of the wire thereby providing a free movement along the piano wire 9. It is noted that the wire is secured into the cross piece at the respective ends which provides a pivot point in which the piano wire may pivot about in relative relation to the handle.

9. Claims 2-4, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Delbor 5725305.

Delbor teaches a handle 2, a cross piece 4 and 4, which extends at an orientation which is transversely relative to the handle and has two end loops 6,6 figure 2 which are connected to two corresponding loops 10, 10 of the wire 12 and coil 14. The wire and coil 14 form a planar utility portion. The cooperation of the two

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loop legs of the cross piece 4,4, cooperate with the ends of the loops 10, 10 of the utility portion thereby would inherently allow a pivotal movement relative to the handle 2.

10. Claims and 7-8, 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Wiley et al 3031707.

The Wiley reference teaches an apparatus with an elongated handle 12; a generally planar utility portion 10, formed by 18, 16, 18, 16 in figure 3, at one end of the handle 12; and a crosspiece 22 extending generally transversely relative to the handle 12, wherein the cross piece is connected to both the utility portion and the handle in such a manner that the utility portion and the handle are pivotally movable relative to each other. It is also note that the handle has two leg portions on from each side of the u-bracket 28 in which are bent to meet at each other to form about the cross piece. Also note the lugs 20, 20 on each side of the cross piece 20 which prevent lateral movement of the loop 10 relative to the legs of the u-bracket.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delbor 5725305.

The Delbor reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the shape of the wire and the relative diameters of the wire and loop.

Since it has been held that, absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In *re Dailey*, 149 USPQ 47 (CCPA 1976), and whereby different shapes may provide a more effective aesthetic feature to the user, absent any unexpected result, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the shape of the wire to any commonly known geometric shape such as a circle, square, rectangle, oval, triangle, heart, hexagon, etc. so that the device would be more aesthetically pleasing.

With regards to relative wire choices, Delbor shows both wires, but does not discuss the choice of wire gauge used in the wire and the coil. Since such a modification wire gauge would have involved a mere change in the size of a component and whereas, a change in size is generally recognized as being within the level of ordinary skill in the art. In *re Rose*, 105 USPQ 237 (CCPA 1955), absent any unexpected result, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the wire diameter to that the loop is of a greater diameter than that of the coil wire in order to provide greater strength to the loop while reducing material costs of forming the wire coil.

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***Response to Arguments***

13. Applicant's arguments with respect to claims 2-4, 7-19 have been considered but are moot in view of the new ground(s) of rejection.


***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kusnitt 1447870, Whitmann 2670938, Boynton 1627315, Thomas 2643907, Des34098 to Fell, Preston 678586, Callender D289958, and Armstrong 6155620.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tony G Soohoo  
Primary Examiner  
Art Unit 1723

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